

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
12 CVS \_\_\_\_\_

THE INSTITUTE FOR SOUTHERN  
STUDIES, INC. d/b/a CAROLINA PUBLIC  
PRESS; GANNETT PACIFIC  
CORPORATION d/b/a ASHEVILLE  
CITIZEN-TIMES; GREEN LINE MEDIA,  
INC. d/b/a MOUNTAIN XPRESS;  
WESTERN NORTH CAROLINA PUBLIC  
RADIO, INC. d/b/a WCQS; and SINCLAIR  
BROADCAST GROUP, INC. d/b/a WLOS-  
TV,

Plaintiffs,

v.

CITY OF ASHEVILLE and BUNCOMBE  
COUNTY DISTRICT ATTORNEY'S  
OFFICE,

Defendants.

**VERIFIED COMPLAINT AND  
APPLICATION FOR ORDER  
COMPELLING DISCLOSURE OF  
PUBLIC RECORDS**

Plaintiffs, complaining of the acts of the Defendants, allege and state that:

1. Plaintiff The Institute for Southern Studies, Inc. ("ISS") d/b/a Carolina Public Press ("Carolina Public Press") is a nonprofit corporation organized and existing under and by virtue of the laws of the State of Georgia, with headquarters in Durham, North Carolina. Among other things, the ISS sponsors a nonprofit media project known as "Carolina Public Press," which is engaged in in-depth, investigative, and independent reporting on matters of public interest in the 17 westernmost counties of North Carolina, including in Buncombe County, and publishes news reports online at [www.carolinapublicpress.org](http://www.carolinapublicpress.org).

2. Plaintiff Gannett Pacific Corporation d/b/a the *Asheville Citizen-Times* (the "*Citizen-Times*"), which is registered to do business in North Carolina, publishes the *Asheville*

*Citizen-Times*, a daily newspaper of general circulation in Buncombe County and the surrounding area. The newspaper also operates a website at [www.citizen-times.com](http://www.citizen-times.com).

3. Plaintiff Green Line Media, Inc. d/b/a *Mountain Xpress* (“*Mountain Xpress*”) is a corporation organized and existing under and by virtue of the laws of the State of North Carolina. Among other things, *Mountain Xpress* publishes and does business in Buncombe County and the surrounding area as *Mountain Xpress*, a weekly newspaper of general circulation, and on [www.mountainx.com](http://www.mountainx.com).

4. Plaintiff Western North Carolina Public Radio, Inc., licensee and operator of the radio station WCQS (“WCQS”), is a nonprofit corporation organized and existing under and by virtue of the laws of the State of North Carolina. Among other things, WCQS does business in Buncombe County and the surrounding area as WCQS and [www.wcqs.org](http://www.wcqs.org), a public radio station located in Asheville, North Carolina and serving the Greenville-Spartanburg, South Carolina TSA.

5. Plaintiff Sinclair Communications, LLC, which owns television broadcast station WLOS-TV (“WLOS-TV”) is a limited liability company organized and existing under and by virtue of the laws of the State of Maryland. Among other things, WLOS-TV does business in Buncombe County and the surrounding area as WLOS-TV and on [www.wlos.com](http://www.wlos.com) a television station located in Asheville, North Carolina and serving the Asheville, North Carolina DMA.

6. Defendant City of Asheville (the “City”) is an agency of North Carolina government within the meaning of North Carolina’s Public Records Act, N.C. Gen. Stat. § 132-1, et seq. (the “Public Records Act”), and/or is otherwise subject to the requirements of the Public Records Act.

7. Defendant Buncombe County District Attorney's Office (the "District Attorney's Office") is an agency of North Carolina government within the meaning of the Public Records Act, and/or that is otherwise subject to the requirements of the Public Records Act.

8. Ronald L. Moore ("Moore") is the District Attorney for Buncombe County and is the custodian of records for the District Attorney's Office.

9. This is an action brought pursuant to the Public Records Act. The General Assembly expressed the policy behind and purposes of the Public Records Act as follows: "public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." N.C. GEN. STAT. § 132-1(b).

10. Section 132-6 of the Public Records Act requires that "[e]very custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law." N.C. GEN. STAT. § 132-6.

11. Section 132-9 of the Public Records Act provides:

Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

N.C. GEN. STAT. § 132-9.

12. This Court has jurisdiction over the parties, and venue is proper in this Court.

13. This dispute concerns certain documents created as a result of the disappearance of a substantial number of items, including drugs, prescription medication, weapons, and money from the evidence room maintained by the Asheville Police Department.

14. The disappearance of items from the Asheville Police Department's evidence room was first discussed publicly in early 2011. The issue represents a matter of substantial public importance because it involves not only the conduct and procedures of the Asheville Police Department, but also impacts the integrity of the cases investigated by the police department.

15. Upon information and belief, drug charges were dropped against at least one person as a result of missing evidence, and unsecured bonds were obtained against at least four persons charged with violent crimes as a result of uncertainty over the existence of evidence sufficient to prosecute these persons.

16. In the wake of this public controversy, the Asheville City Council voted on April 12, 2011 to commission a forensic inventory of the evidence room with a private firm, Blueline Systems and Services ("Blueline"). The City ultimately entered into a written contract with Blueline, a copy of which is attached hereto as Exhibit A. The contract specifically provides that the City is to receive a copy of Blueline's audit report, with any portions that would impair or impede any pending investigation redacted.

17. Blueline's audit began on or about May 30, 2011, and it took approximately five months to complete. When Blueline finished its work in October 2011, it invoiced the City \$174,723 for its services.

18. Sometime thereafter, but by January 9, 2012, at the latest, Blueline submitted its audit report. Upon information and belief, the report was received by Moore and possibly others.

At the very least, a number of officials with the City and the Asheville Police Department, including the current police chief, were and have been briefed about the contents of the report.

19. Upon information and belief, Blueline's audit report is a multivolume document that includes raw data cataloguing the items that were, or should have been, in the evidence room, as well as charts, tables, and attachments that summarize those data.

20. Starting in January 2012, Plaintiffs submitted a series of public records requests to the City, the Asheville Police Department, and/or the District Attorney's Office (through Moore), seeking disclosure of the audit report prepared by Blueline. These requests include:

- a. A January 20, 2012, request submitted by *Mountain Xpress* to Moore, attached hereto as Exhibit B.
- b. A March 23, 2012, request submitted by *Mountain Xpress* to Moore, attached hereto as Exhibit C.
- c. An April 19, 2012, request submitted by *Citizen-Times* to Moore, attached hereto as Exhibit D.
- d. An April 23, 2012, request submitted by WLOS-TV to Moore and the City, attached hereto as Exhibit E.
- e. An April 24, 2012, request submitted by *Carolina Public Press* to Moore, attached hereto as Exhibit F.
- f. A May 1, 2012, request submitted by *Carolina Public Press* to the Asheville Police Department, attached hereto as Exhibit G.
- g. A May 1, 2012, request submitted by *Carolina Public Press* to Moore, attached hereto as Exhibit H.

21. The District Attorney's Office (through Moore) provided no response at all to the first two above-detailed requests, and the subsequent requests were denied by Defendants. Moore contended that the entire audit report is exempt from disclosure pursuant to Section 132-1.4 of the Public Records Act. The City has contended that it does not have access to the audit report, despite the clear language of the City's contract with Blueline that entitles the City to a copy of the report (with redactions if necessary to protect any pending investigation).

22. A number of officials with the City and the Asheville Police Department have been briefed on the contents of the report. In addition, criminal defense attorneys have been briefed on the contents of the audit report, and one defense attorney in particular, Lee Ann Melton, was provided a copy of the audit report.

23. Nevertheless, Defendants have failed and refused, and continue to fail and refuse, to provide Plaintiffs with access to the audit report.

24. Defendants' failure to release the audit report documents on the grounds that they constitute "records of criminal investigations" is not supported by the plain language of the statute. "Records of criminal investigations" are limited to those records that "pertain[] to a person or group of persons that [are] compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law . . . ." N.C. GEN. STAT. § 132-1.4(b)(1).

25. A catalogue of the items in the evidence room, specifying which items have gone missing, does not "pertain[] to a person or group of persons" and therefore does not meet the definition of "records of criminal investigations" set out in the statute.

26. In addition, the evidence room audit was commissioned and contracted for by the City, which is not a public law enforcement agency. This further places the evidence room audit report beyond the scope of the exception set out in Section 132-1.4.

27. Furthermore, Section 132-1.4(f) expressly provides that “[n]othing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the inspection, examination, or copying of such public record in compliance with G.S. 132-6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.”

28. Thus, neither the District Attorney’s Office nor any other law enforcement agency may limit the City’s access to or disclosure of a public record. Even more significantly, the fact that the District Attorney’s Office or other law enforcement may be using a public record in connection with an investigation—here the evidence room audit—does not alter the audit report’s character as a public record.

29. The City is specifically entitled to receive a copy of the audit report under its contract with BlueLine. Thus, the audit report is within the custody and control of the City (even if not in the physical possession of the City) because it is in the possession of its contractor and the city has contracted to receive a copy. However, rather than secure its copy, the City and Asheville Police Department officials have instead been briefed on its contents. Whether by design to avoid coming into possession of the report or at the behest of Moore, such conduct does not alter the audit report’s character as a public record.

30. Moreover, to the extent there may be any limited information in the audit report that would fall within the definition of “records of criminal investigations” and that, if disclosed,

would compromise any on-going investigation, Defendants are obligated to redact any such information and disclose the remaining portions of the report. Section 132-6(c) provides: “No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information.” This is consistent with the language of the City’s contract with Blueline, which allows for redaction of the copy provided to the City if necessary to protect the integrity of an investigation. However, the City also has apparently made no effort to secure a redacted version of audit report.

31. Finally, even if the entire audit report is deemed to fall within the definition of “records of criminal investigations,” a court still may order its disclosure. N.C. GEN. STAT. § 132-1.4(a).

32. Defendants’ refusal to promptly disclose the public records sought by Plaintiffs, including (a) the conduct of the City designed to avoid coming into actual physical possession of the report or (b) the efforts to Moore to restrict the ability of the City to make public records available for inspection, is directly contrary to the language chosen by and the intent of the General Assembly in enacting the Public Records Act. Defendants’ actions frustrate the purpose of the Public Records Act, which is that “public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people.”

33. The actions of Defendants as set forth herein violate the Public Records Act.

34. Pursuant to Section 132-9, this Court is authorized to compel the disclosure of public records and public information and, in particular, to compel the release of the evidence room audit report, along with any attachments or exhibits thereto, prepared by Blueline pursuant to its contract with the City. Plaintiffs are entitled to such relief through an order compelling Defendant to disclose the audit report and, to the extent the City does not have the report in its



physical possession, through an order compelling the City first to secure from its contractor the copy of the report it is entitled to under to its contract and then disclose the report.

35. As a result of Defendants' violation of the Public Records Act, Plaintiffs' and the public's understanding of the people's business has been and is being impaired.

36. The information sought by Plaintiffs is essential to the maintaining of the public's understanding of and confidence in the work of law enforcement officials supervised by Defendants.

37. Plaintiffs and the public will suffer irreparable injury through further impairment of their knowledge and understanding of the people's business as alleged herein, unless Defendants are enjoined from continuing and recurring violations of the Public Records Act.

38. In addition, an actual controversy of a justiciable nature presently exists between Plaintiffs on the one hand, and Defendants on the other, concerning the proper construction of the Public Records Act. The controversy is sufficiently immediate to justify the issuance of a declaratory judgment pursuant to the Declaratory Judgment Act.

39. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy between the parties.

40. Plaintiffs request that the Court declare that the Public Records Act requires the release of the evidence room audit report, along with any attachments or exhibits thereto, prepared by Blueline pursuant to its contract with the City.

41. Pursuant to Section 132-9(c), Plaintiffs are entitled to recover their reasonable attorneys' fees from Defendants.

WHEREFORE, Plaintiffs pray the Court that:

1. This action be treated as a petition for extraordinary injunctive relief, in the nature of a writ of mandamus, pursuant to Section 132-9;
2. This action, being in the nature of a petition for extraordinary injunctive relief, be accorded priority pursuant to Section 132-9 and set for immediate hearing before a presiding Superior Court Judge;
3. The Court issue an order requiring Defendants to appear before this Court and show cause, if any there be, why they should not be compelled to make available for public inspection and copying the public records and public information described herein;
4. Plaintiffs recover judgment against Defendants declaring that the records referenced herein are public records subject to disclosure under the Public Records Act;
5. The Court issue a permanent injunction compelling Defendants to release the records sought by Plaintiffs in this action, including the evidence room audit report, along with any attachments or exhibits thereto, prepared by Blueline pursuant to its contract with the City;
6. They recover their reasonable attorneys' fees and costs incurred in seeking the requested relief; and
7. They recover any further relief that the Court deems appropriate.

This the 22<sup>th</sup> day of June, 2012.



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Charles E. Coble  
N.C. State Bar No. 25342  
Eric M. David  
N.C. State Bar No. 38118  
BROOKS, PIERCE, MCLENDON,  
HUMPHREY & LEONARD  
Post Office Box 1800  
Raleigh, NC 27602  
Telephone: (919) 839-0300  
Facsimile: (919) 839-0304

*Attorney for Plaintiffs*

STATE OF NORTH CAROLINA

BUNCOME COUNTY

VERIFICATION

Angie Newsome, being fully sworn upon his oath, deposes and says:

1. I am the Director and Editor of the *Carolina Public Press*, a Plaintiff in the foregoing Complaint, and I am familiar with the matters alleged therein and am authorized to make this verification.

2. The allegations in the foregoing Complaint are true and accurate to the best of my knowledge, except for those allegations stated upon information and belief, and as to those allegations, I believe them to be true.

This the 19 day of June, 2012.

Angie Newsome  
Angie Newsome

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE



Signed and sworn to (or affirmed) before me this day by Angie Newsome.

Date: 6-19-2012

(Official Seal)

Leslie C. Fay  
Signature of Notary Public

LESLIE C. FAY  
Printed Name of Notary Public

My Commission Expires: 2-3-2013

Contract Signature Page

Account #  
22000120 521001 P0911  
OK per Tony (TM)

Contract # 91100823  
Council Resolution # \_\_\_\_\_ (If applicable)

IN WITNESS WHEREOF, each party has caused this agreement to be executed by its duly authorized official as of the day and year written above.

The Department Director by Written Approval conveys that this contract has been reviewed and presented for approval by the City of Asheville.

Shade Wood DATE 6/7/11  
Department Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Lauren Bradley DATE 6-7-11  
Chief Financial Officer

City Manager's signature, if required

Attest to:

CITY OF ASHEVILLE

Magdalen Brulson BY: [Signature] DATE 6-7-11  
City Clerk City Manager  
(Corporate Seal)

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE Haywood

I, Notary Public of the County and State aforesaid, certify that Magdalen Brulson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this 7<sup>th</sup> day of June, 2011.

Notary Public [Signature]  
Printed Name: Thomas Eugene Downing  
My Commission Expires: 2-2-2016

Remove this Statement and insert one of the following signature paragraphs plus notary witness on this Contract Signature page, depending on the type of business you are contracting with. ONLY USE ONE OF THE FOLLOWING SIGNATURE STATEMENTS ON THIS CONTRACT AGREEMENT FORM!

Individual Person / Sole Proprietorship  
or  
Partnership  
or  
Corporation  
or  
Limited Liability Corporation



STATE OF NORTH CAROLINA

SERVICE CONTRACT

COUNTY OF BUNCOMBE

NUMBER \_\_\_\_\_

THIS SERVICES CONTRACT, (hereinafter referred to as the "Agreement") made and entered into this 31 day of May 2011, by and between the City of Asheville, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as "City"), and Blueline Systems & Services LLC, hereinafter referred to as ("Contractor").

WITNESSETH:

Upon the terms and conditions hereinafter set forth, the City has requested and Contractor has agreed to furnish the City with services as set forth in this contract. The City and Contractor agree as follows:

A. TERMS AND CONDITIONS:

1. Contractor shall provide the City with services (herein "the Services") consisting of the following: conduct a forensic inventory of the Asheville Police Department evidence room and prepare a final report of the results upon completion of said inventory. See Schedule "A" for scope of work, Schedule "B" for addition duties of the City, and Schedule "C" for procedure, attached and incorporated herein by reference.
2. The term of this Agreement shall begin on the day first written above and continue until the work is completed, as set forth in Schedule "A", "B", and "C", subject to earlier termination as provided in this Agreement. The term of the Agreement may be extended upon written agreement by both parties.
3. The City will compensate the Contractor in an amount not to exceed \$175,000.00. If the contract exceeds the aforementioned threshold, the City must amend or renew the contract in accordance with all applicable City policies.
4. The Contractor shall bill the City \$85.00 per hour for each hour expended by employees who are examiners and \$20.00 per hour for each hour expended by employees who are evidence locators or scribes in performing the terms and conditions of the Agreement. The Contractor shall bill the City \$120.00 an hour per each hour expended for Contractor's representative to attend any meeting with the City, the District Attorney's Office of the 28<sup>th</sup> Judicial District (herein "District Attorney") or the Buncombe County IT Department in performing the terms and conditions of the Agreement. The Contractor shall provide a timekeeping record of all hours worked and description of the duties performed during the hours worked.
5. The Contractor shall be reimbursed, in addition to the compensation referred to in Paragraphs 3 and 4 above, for all reasonable and necessary expenses incurred by the Contractor in connection with performance of

this Agreement, including equipment necessary to protect the integrity of the inventory or safety of the persons conducting such inventory. The City may provide such materials and supplies directly to the Contractor. During the performance of this Agreement, it may be necessary for Contractor to seek assistance of the Buncombe County IT Department and Contractor will not be responsible for any fees or expenses incurred for such assistance.

6. All timesheets and invoices, and receipts for reimbursement shall be submitted to Captain Tim Splain, Administration Division Commander or his designee for review and payment of services. These time sheets, invoices, and receipts for reimbursement shall be submitted on a weekly basis (every Monday) after Contractor undertakes and begins work on said inventory. The City shall pay all invoices and receipts for reimbursement within seven (7) days of submittal. If any invoice or receipt for reimbursement remains unpaid for ten (10) days after its submission to the City, Contractor may terminate this Agreement without further liability to the City. The City shall pay any unpaid Invoices for any work completed pursuant to the performance of this Agreement.
7. In the event that an employee of Contractor is subpoenaed to court by the District Attorney or any attorney, to testify in any matter related to the performance of this Agreement, the City agrees to reimburse that person for all reasonable expenses incurred in connection with complying with said subpoena, including reasonable hourly compensation for travel, preparation and testimony (either in court, deposition or any administrative proceeding) at an hourly rate to be agreed upon between the City and Contractor. In the event the parties do not agree upon said rate, then such rate shall be established by the resident Superior Court Judge of such District upon petition by either party. If such employee has been appointed as an expert witness by an order of the Court so that an expert witness fee can be awarded by the Court, then this paragraph shall not apply. Payments pursuant to this subsection may not exceed \$50,000.00 per year without appropriate Council authority. Contractor shall provide the City Attorney's Office a copy of the subpoena within 24 hours of receipt of the same.
8. Contractor shall be considered an independent contractor and not as an employee of the City in providing the services under this Agreement. Contractor and the City acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service. Any employees furnished by Contractor, pursuant to this Agreement, will be employees of Contractor. Contractor will maintain complete control over the employees' conduct and will disburse all payrolls, taxes, license, and insurances, during the term of this Agreement.
9. Contractor shall be properly licensed and skilled in his/her respective trade.

10. Contractor and City shall cooperate to complete the Services in a manner satisfactory to both parties and as expeditiously as possible.
11. Contractor shall have independence and complete control of the forensic Inventory including control of form, procedure, schedule, reporting and process during the term of this Agreement.
12. Contractor shall comply with all state, federal or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement, including but not limited to, equal opportunity employment laws, O.S.H.A., minimum wage and hour regulation, North Carolina State Building Code regulations and immigration laws.
13. Contractor shall maintain all fiscal records relating to this Agreement in accordance with Generally Accepted Accounting Principles, and shall maintain any other records pertinent to this Agreement in a manner so as to clearly document Contractor's performance. The City shall have a right to access the fiscal and other records of Contractor that are pertinent to this Agreement to perform examinations and audits. Contractor shall retain and keep accessible all the fiscal and other records for a minimum of three (3) years following final payment and termination of this Agreement, or until the conclusion of any audit or controversy related to this Agreement, whichever is later.
14. Upon completion of the inventory, Contractor shall return to the City all equipment and materials, including but not limited to all computer equipment, software and databases, provided to the Contractor by the City in order to perform the services contemplated in this Agreement. The City shall be sole owner of said equipment and materials upon completion of the forensic inventory.
15. Upon completion of the forensic inventory, Contractor shall provide the District Attorney with a copy of the final report consisting of the results of the inventory and any recommendations, if applicable. Contractor shall provide the City with a copy of the final report unless the release of information provided in the final report, as determined by the District Attorney: 1) is likely to jeopardize the State's ability to prosecute a defendant; or 2) is likely to undermine an ongoing or future criminal investigation. In the event the above-stated conditions apply, Contractor, in consultation with the District Attorney, shall redact or remove from the final report such confidential information and provide the City with a copy of the remaining information contained in the final report.

B. CONFIDENTIALITY: Contractor agrees that neither it nor its employees will disclose, divulge, reveal, report or use, for any purpose, any information with respect to the business of the City, which the Contractor has obtained, except to the District Attorney and any assistant or support staff designated by the District Attorney, any state or federal law enforcement agency or as directed by a lawful order of any court of competent jurisdiction. This obligation will survive indefinitely upon termination of this Agreement.



- C. INSURANCE: The work performed under this Agreement has been classified as a standard risk profile. The Contractor agrees to keep and maintain for the duration of this Agreement the following:

- 1) Worker's Compensation: statutory
- 2) Employers liability: \$100,000 each accident/\$100,000 each disease/  
\$500,000/disease policy limit
- 3) General liability: \$500,000
- 4) Professional liability: \$500,000

The Contractor shall furnish the City with certificates of insurance for each type of insurance described herein. In the event of cancellation, substantial changes or nonrenewal, the Contractor and insurance carrier shall give the City at least thirty (30) days prior written notice. No work shall be performed by Contractor until Contractor has furnished to the City the above referenced certificates of insurance, in a form suitable to the City.

- D. INDEMNIFICATION: Contractor shall indemnify, defend and hold harmless the City and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any negligent act or omission of the Contractor or any employee, agent or assign of the Contractor. The City shall indemnify, defend and hold harmless the Contractor and its employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any negligent act or omission of the City or any employee, agent or assign of the City.

Nothing herein shall be construed as a waiver on the part of the City to any defense of any claim, including, but not limited to the defense of governmental immunity.

- E. TERMINATION: This Agreement may be terminated by either party, with thirty (30) days prior written notice. Notice shall be served under this Agreement by registered mail, certified mail or by hand-delivery. Except as otherwise provided in this Agreement, the obligations of the Contractor will cease upon termination of the Agreement. If the City terminates the Agreement before 500 hours of work is completed, a termination fee of \$2,500.00 shall be paid to the Contractor, which shall be in addition to, and not in lieu of, any amount owed to Contractor pursuant to Sections 4 and 5 above.

- F. MODIFICATION: Any amendment or modification of this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

- G. ENTIRE AGREEMENT: This agreement contains the entire agreement between the parties. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

- H. SEVERABILITY: Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.
- I. GOVERNING LAW: This contract is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.
- J. ASSIGNABILITY: This contract is not assignable by either party without the prior written consent of the other party.
- K. REQUIREMENT OF CITY CONTRACTS:
1. Contractor shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. Contractor hereby agrees to indemnify the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of Contractor, its subcontractors, agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.
  2. Contractor will comply with the City's Drug Free Workplace policy.

BY:

BLUELINE SYSTEMS & SERVICES LLC

Signature:

Michael Wright, Member/Manager

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, Sandra P. Cole, a Notary Public for said County and State do hereby certify that Michael Wright, Member/Manager of Blueline Systems & Services, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and notarial seal this 6 day of June, 2011.



Notary Public Sandra P. Cole  
Printed Name: Sandra P. Cole  
My Commission Expires: 6-24-2017

## Schedule "A"

Organize two 4-person teams of property and evidence locators, examiners and scribes although teams may work independent of one another and at different times. Teams may work as a team with as few as two team members present.

Construct clean workstations to forensically examine property and evidence reviewed in the audit.

Each item will be pulled up in the OSSI computer system.

Pending or completed cases will require cross-referencing to criminal court file numbers.

The item will be located on the shelf or bin.

The seals will be examined and evaluated for compliance with proper forensic technique including record keeping and document such action taken with respect to each item. Anything noted as irregular will be referred to the State Bureau of Investigation (herein "SBI") for investigation as they deem warranted.

Bench notes will be made regarding the item's condition and the actions of those making the inspection.

The package and seals will be photographed of each item both before opening (if opened) and resealing (if applicable).

The contents will be verified in such a way as to preserve original custody marks if possible. The technician will be gloved and use proper forensic procedures.

Item will be resealed and marked with inventory markings and barcode to evidence that the item was inspected.

Items passing inspection will be green tagged. The standard shall be: all numbers and information match records. Seals and initials unbroken and in place, no evidence of tampering. All contents present and match description, weight and quantity. No visible evidence of substitution.

Items with minor discrepancies (clerical errors, inversion of numbers, missing tag, etc.) will be yellow tagged. The standard shall be: fails any element of green tag standard but may be correctable with further research or clarification, no evidence of tampering. Notes of such further research will be included in report.

Items with major problems will be red tagged or yellow tagged and reported promptly to the SBI for further action or instruction.

A form will be completed for each package.

Items where weight has been weighed will also be weighed. If a discrepancy appears to exist, a notation of the difference will be recorded.

A spreadsheet style database will be compiled.

Status updates and requests for information will flow freely between the Contractor and the District Attorney and Contractor will meet with the District Attorney as requested.

Contractor will meet with IT as necessary to insure that the project is completed and data assembled as efficiently as possible.

Contractor will cooperate on an ongoing basis with the SBI investigation as requested.

## Schedule "B" Additional Duties of Customer

The Customer shall furnish the following:

In view of the proprietary nature of the OSSI software, the City shall provide OSSI consulting as requested by the Contractor.

The City shall surrender any and all keys to the former evidence room in question to Contractor. Upon surrender, Contractor will reset the alarm to the former evidence room to a new code. The City shall not have access to the new code and the new code shall be known only to Contractor and its employees. The City shall notify all of its employees that no one is allowed in the former evidence room except for Contractor, unless Contractor expressly requests the presence of a specific person and only if that person is accompanied by the Contractor.

One liaison for business related issues such as ordering supplies, billing, time sheets, purchasing and maintenance.

One secure fax line.

1 copy of CALEA standards for property and evidence.

1 Copy of CALEA standards for property and evidence as adopted by the Asheville Police Department.

IT assistance with archiving and audit trail for OSSI and involved computers.

### Schedule "C" Procedures

All procedures to be used by Contractor will be reviewed by the office of the District Attorney of the 28<sup>th</sup> Judicial District. Since the District Attorney of the 28<sup>th</sup> Judicial District is familiar with the pending case, the age of such cases as well as the importance or priority of all cases, the District Attorney may, from time to time, suggest to the Contractor the priority order of such inventory research.

When a team is present in the property area, at least two persons shall be in the room at all times.

At least 30 hours per week shall be expended on the project until completed.

Examiners shall be trained in proper forensic procedures.





Jan. 20, 2012

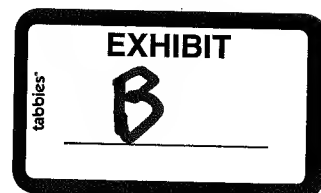
District Attorney Moore,

This is an open records request for the audit report of the APD evidence room, completed around Jan. 9, such sections of that as can be made public, or a statement of the reasons why the report can not be released.

Thank you for your help and assistance in this matter.

Sincerely,

David Forbes  
Senior News Reporter  
Mountain Xpress  
828-251-1333, x137





2 Wall St. Suite 212  
PO Box 144  
Asheville, NC 28802  
828-251-1333  
FAX 251-1311

[www.mountainx.com](http://www.mountainx.com)

March 23, 2012

District Attorney Moore,

This is a follow-up to our open records request of Jan. 20 for the audit of the Asheville Police Department evidence room completed Jan. 9. No response to that request has been forthcoming, either to turn over the requested documents or cite a specific statutory reason why they may be withheld. N.C.G.S. § 132-6 mandates that custodians of public records provide copies "as promptly as possible" after a request. More than two months is well past a reasonable period of time to craft a response to our request for public documents.

We have consulted with attorneys at the North Carolina Press Association, who advise us that evidence room audit reports generally do not fall under the criminal investigations exception allowed by N.C.G.S. § 132-1.4, and so qualify as public records. That section of law specifically notes that "the use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record."

Please honor our second records request and turn over the audit report promptly.

Sincerely,

David Forbes  
Senior News Reporter, *Mountain Xpress*

Margaret Williams  
News Editor, *Mountain Xpress*

Jeff Fobes  
Publisher, *Mountain Xpress*

ASHEVILLE  
**CITIZEN-TIMES**  
VOICE OF THE MOUNTAINS • CITIZEN-TIMES.com

**Randy Hammer**  
*President and Publisher*

April 19, 2012

Ron Moore  
District Attorney  
Buncombe County Courthouse  
60 Court Plaza  
Asheville, N.C. 28802

Ron Moore,

This is a public records request for the police evidence room audit that was completed this year.

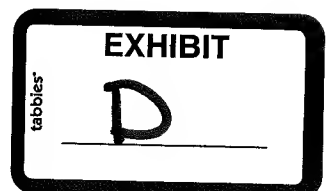
Please send the audit via e-mail. If you cannot and the audit has to be given in the form of paper copies, please let me know as soon as possible and I will come by to pick up the report.

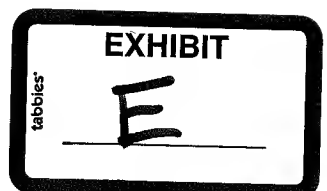
If you cannot give the audit, please cite specific legislation that prevents you from complying with state open records law.

Thanks much,

Joel Burgess  
Reporter  
Asheville Citizen-Times  
828.232.5960  
jburgess@citizen-times.com

(828) 232-5933 DIRECT | (828) 252-5887 FAX  
14 O. HENRY AVE. | P.O. BOX 2090 | ASHEVILLE, NC 28802 | (800) 800-4204





From: Bryan Luhn <bluhn@sbgnnet.com>  
Date: April 23, 2012 3:57:01 PM EDT  
To: susanne.m.middleton@nccourts.org, DHitch@ashevillenc.gov  
Cc: Julie Fries <jfries@wlos.sbgnnet.com>, Russ Bowen <rbowen@wlos.sbgnnet.com>  
Subject: **WLOS - Open Records Request**

Attn: Ron Moore, Buncombe Co. District Attorney and Dawa Hitch, Public Information Officer for the City of Asheville

Pursuant to the North Carolina open records law, N.C. Gen. Stat. sec 132-1 to 132-10, WLOS-TV (Asheville) is requesting access to and copies of the results of an independent audit of the Asheville Police Department evidence room conducted by BlueLine Systems & Services and paid for by the city of Asheville which were sent to District Attorney Ron Moore in January.

I am requesting this information be delivered as soon as promptly as possible.

Thank you for your assistance,

Bryan Luhn  
Assistant News Director  
WLOS News13  
110 Technology Drive  
Asheville, NC 28803  
828-651-4553  
828-776-1199 (Cell)



# CAROLINA PUBLIC PRESS

in-depth, investigative, independent  
reporting for Western North Carolina

Angie Newsome  
Editor and Director  
Carolina Public Press  
PO Box 17595 Asheville, NC 28816

Phone: 828-279-0949

April 24, 2012

Buncombe County District Attorney's Office  
Buncombe County Courthouse  
PO Box 7158  
Asheville, N.C. 28802  
Phone: 828-259-3410  
Fax: 828-259-3411

## RECORDS REQUEST

Dear Mr. Ron Moore and/or Records Request Officer:

Pursuant to the state open records act, I request access to and copies of the full and complete audit of the Asheville Police Department's evidence room, as produced and delivered by Blueline Systems & Services.

Because we are acting in the public interest, will use the materials to educate the public and are a nonprofit media organization, we request a fee waiver for any and all materials falling within this records request. If a fee waiver is not granted, we request to be informed if the costs exceed \$10. A digital copy of the audit is acceptable.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act and how it is relevant to the material requested.

Thank you for your assistance. You may respond to this request by e-mail to [anewsome@carolinapublicpress.org](mailto:anewsome@carolinapublicpress.org). Please call me at the above phone number if you have any questions.

Sincerely,

Angie Newsome  
Editor and Director  
Carolina Public Press and [carolinapublicpress.org](http://carolinapublicpress.org)  
[anewsome@carolinapublicpress.org](mailto:anewsome@carolinapublicpress.org)

PO Box 17595, Asheville, NC 28816 • Tel 828.279.0949 • Fax  
828.255.8292

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Angie Newsome  
Editor and Director  
Carolina Public Press  
PO Box 17595 Asheville, NC 28816  
Phone: 828-279-0949

May 1, 2012

Asheville Police Department  
P.O. Box 7148, Asheville, NC 28802  
Phone: 828-259-5855

Sent via e-mail to: [wjwelch@ashevillenc.gov](mailto:wjwelch@ashevillenc.gov)

## RECORDS REQUEST

Dear Lt. Wallace Welch, and/or other Records Request Officer:

Pursuant to the state open records act, I request access to and copies of the full and complete audit of the Asheville Police Department's evidence room, as produced and delivered by Blueline Systems & Services.

Because we are acting in the public interest, will use the materials to educate the public and are a nonprofit media organization, we request a fee waiver for any and all materials falling within this records request. If a fee waiver is not granted, we request to be informed if the costs exceed \$10. A digital copy of the audit is acceptable.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act and how it is relevant to the material requested.

Thank you for your assistance. You may respond to this request by e-mail to [anewsome@carolinapublicpress.org](mailto:anewsome@carolinapublicpress.org). Please call me at the above phone number if you have any questions.

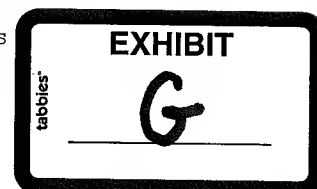
Sincerely,

Angie Newsome  
Editor and Director  
Carolina Public Press and [carolinapublicpress.org](http://carolinapublicpress.org)  
[anewsome@carolinapublicpress.org](mailto:anewsome@carolinapublicpress.org)

CC: Charles Coble, attorney, Brooks Pierce

PO Box 17595, Asheville, NC 28816 • Tel 828.279.0949 • Fax  
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Angie Newsome  
Editor and Director  
Carolina Public Press  
PO Box 17595 Asheville, NC 28816  
Phone: 828-279-0949

May 1, 2012

Buncombe County District Attorney's Office  
PO Box 7158  
Asheville, N.C. 28802  
Phone: 828-259-3410  
Fax: 828-259-3411

## **SECOND RECORDS REQUEST**

**First request faxed April 24, 2012. Confirmed receipt. No response.**

Dear Mr. Ron Moore and/or Records Request Officer:

Pursuant to the state open records act, I request access to and copies of the full and complete audit of the Asheville Police Department's evidence room, as produced and delivered by Blueline Systems & Services.

Because we are acting in the public interest, will use the materials to educate the public and are a nonprofit media organization, we request a fee waiver for any and all materials falling within this records request. If a fee waiver is not granted, we request to be informed if the costs exceed \$10. A digital copy of the audit is acceptable.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act and how it is relevant to the material requested.

Thank you for your assistance. You may respond to this request by e-mail to [anewsome@carolinapublicpress.org](mailto:anewsome@carolinapublicpress.org). Please call me at the above phone number if you have any questions.

Sincerely,

Angie Newsome  
Editor and Director  
Carolina Public Press and [carolinapublicpress.org](http://carolinapublicpress.org)  
[anewsome@carolinapublicpress.org](mailto:anewsome@carolinapublicpress.org)

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EXHIBIT

H

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in-depth, investigative, independent  
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CC: Charles Coble, attorney, Brooks Pierce

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